down small rivals whose customers could readily shift to the BOC's larger competitors."[72] Thus, predatory pricing against ***any*** competitor makes no economic sense.

MFS filed a numerical illustration that purports to show how a BOC is at a "insurmountable competitive advantage" over even a more efficient competitor.[73] But the MFS example ignores section 272(e)(3), which requires that an interLATA affiliate pay the same for access that unaffiliated carriers do. This is a requirement even where the BOC and the affiliate are joint marketing local and long distance service together. Under the MFS example, if the BOC is charged the same amount for access as the nonaffiliated competitor, it is in no better position than the unaffiliated competitor. Moreover, MFS ignores the potential that the unaffiliated competitor can now enter the local market, either through its own facilities, resale or the purchase of unbundled elements. Indeed, to the extent the unaffiliated competitor purchases so call "essential facilities" below cost through resale of subsidized local rates, it is the competitor that is at an "insurmountable competitive advantage" over the incumbent local exchange provider.[74]

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72 ***US v. Western Electric***, 993 F.2d 1572, 1579 (D.C. Cir.), ***cert. denied***, 510 U.S. 984 (1993).

73 Comments of MFS, Attachment 1 at 1. Based on its recent merger announcement, MFS does not appear to believe its own rhetorical claims that BOCs have an "insurmountable" competitive advantage. ***See*** "WorldCom Reaches Pact to Buy MFS in $14.4 Billion Stock Deal," Wall Street Journal at A3 (Aug. 26, 1996).

74 The same potential could exist through the purchase of low cost unbundled facilities where the actual embedded cost of those facilities remains unrecovered.

Regardless, dominant regulation provides no added market protection and only increases the costs and reduces the flexibility of potential new competitors.[75] Thus, while such regulation helps individual competitors, it hurts competition and thereby hurts consumers.

VII. The Commission Should Reject Other Extraneous Claims

A number of commentors not only ask the Commission to rewrite the section 272 rules, which it should not, but they make additional arguments on matters unrelated to this docket. While these arguments are wrong on their merits, the Commission should not even entertain them here.

For example, many of the long distance incumbents argue that the Commission should modify the section 271 standards under which BOC applications for long distance entry will be judged.[76] They argue that the specific checklist requirements that will open the local market to competition are insufficient, and that the Commission should expand the checklist by requiring extensive local competition before a BOC is even allowed to begin competition with them in the long distance market.[77] This would mean that long distance incumbents would face no additional competition in the long distance market, while they have the option of entering the local market, or delaying entry in order to deny BOC entry into long distance. This is flatly contrary to the Act, which provides for long distance entry in the presence of a predominantly facilities based

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75 ***See Price Cap Performance Review for Local Exchange Carriers***, CC Dockets 94-1, 93-124, 93-197, Comments of Bell Atlantic at 6-8 (dated Dec. 11, 1995).

76 ***See, e.g.***, AT&T Comments at 3; Sprint Comments at 3; Time Warner Comments at 10.

77 ***See*** AT&T Comments at 3.

competitor operating on any scale that serves both business and residential customers.[78] Moreover, the Act also provides for long distance relief in the complete absence of such a competitor, provided only that the BOC make access to its network available through a statement of generally available terms. There is simply no way that extensive local competition as a prerequisite to long distance entry can fit into this framework.

Moreover, such a requirement is inconsistent with the structure of section 272 as well. Section 272 contains a series of safeguards that are put in place at the time a BOC offers long distance service (and has opened its local market to competition). Those restrictions would be unnecessary if there were a requirement of extensive local competition before a BOC could enter the long distance market. Indeed, once three years have passed, and competitors have had the opportunity of an open local market to establish such local competition, the separation requirements are removed. Again, there is simply no way to make sense of such a statutory scheme if extensive local competition is a condition of long distance entry.

In fact, long distance incumbents made and lost these same arguments before Congress. Prior to passage, an amendment was introduced that would have changed section 271(c)(1) to require interconnection agreements with "telecommunications carriers capable of providing a substantial number of business and residential customers" with service.[79] The debate on the amendment made clear that both sides of the issue understood that, absent passage of the amendment, the Act would allow interLATA entry regardless of whether the qualifying local interconnection agreement was with a small company initially capturing only a few subscribers.[80]

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78 ***See*** 47 U.S.C. § 271(c)(1)(A).

79 141 Cong Rec. S8310, S8319 (June 14, 1995).

80 ***Id.*** at S8319-8321.

But the amendment was rejected by the Senate, and the Act cannot now be rewritten to add requirements expressly rejected by Congress.

Finally, MCI raises an additional extraneous argument that is already before the Commission in another docket. MCI claims that traffic that originates in another country and terminates in a BOC's region should be considered as originating in-region for purposes of section 271.[81] In particular, MCI focuses on traffic handed off to U.S. carriers to terminate in the United States under the Commission's proportionate return policy. Pending in-region relief, the amount of traffic that would be handed off to a BOC or its affiliate for delivery in the U.S. would be based on the volume of outgoing traffic it handles that originates outside its region.

While clearly not in-region originating traffic, MCI would have this traffic considered in-region based on the exception for certain terminating traffic in section 271(j). But that exception only applies to "800 service, private line service, or their equivalents" -- none of which covers international return traffic.[82] Moreover, unlike 800 service and other exceptions that are controlled by the terminating customer, international return traffic is controlled by the carrier of the originating customer, which assigns it to various U.S. facilities-based international carriers based on their proportional traffic to that carrier. This does not "allow the called party to

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81 MCI Comments at 7.

82 47 U.S.C. § 271(j).

determine the interLATA carrier"[83] and does not fall within the scope of section 271(j). MCI's argument is simply without merit.[84]

Conclusion

For the foregoing reasons, the Commission should terminate this rulemaking without adopting additional rules covering section 272. The Commission should, however, rule that BOC affiliates are to be regulated as nondominant providers of long distance service.

Respectfully submitted,

Edward D. Young, III
Michael E. Glover
Of Counsel

Edward Shakin
Lawrence W. Katz

1320 North Court House Road
Eighth Floor
Arlington, VA 22201
(703) 974-4864

Attorneys for the
Bell Atlantic Telephone Companies
and Bell Atlantic Communications, Inc.

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83 47 U.S.C. § 271(j)(2).

84 To the extent MCI also argues here that the Commission should require sub-loop unbundling (p. 12), the same argument was made in docket 96-98 and was rejected by the Commission. ***Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*** at ¶ 391 (rel. Aug. 8, 1996).

ATTACHMENT 1

MCI INTRODUCES

LOCAL SERVICE

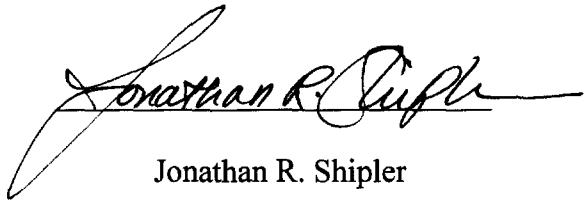
AND THE REWARDS OF HAVING

MORE THAN ONE COMPANY

COMPETE FOR YOUR BUSINESS.

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of August, 1996 a copy of the foregoing "Reply Comments of Bell Atlantic" was sent by first class mail, postage prepaid, to the parties on the attached list.



Jonathan R. Shipler

* By Hand

Janice Myles *
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 544
Washington, D.C. 20554

(Diskette version)

ITS, Inc.*
Room 140
2100 M Street, N.W.
Washington, D.C. 20037